

# Affirmation of Jason Habinsky

## Exhibit

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PHILIP FEI,

Plaintiff

-vs-

WEST LB A.G.,

DOCKET NO.: CV-07-8785 (HB)  
New York, New York  
April 3, 2008

Defendant  
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TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE

BEFORE THE HONORABLE FRANK MAAS  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S :

For the Plaintiff:

LINDA A. NEILAN, ESQ.  
JACK A. RAISNER, ESQ.  
Outten & Golden LLP  
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New York, NY 10016

For the Defendant:

JASON HABINSKY, ESQ.  
Hughes Hubbard & Reed LLP  
One Battery Park Plaza  
New York, NY 10004

Audio Operator:

No Audio Operator

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**KRISTIN M. RUSIN**

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1 | said. And practices refers to operations. How does the  
2 | company operate? How do they classify people, what they're  
3 | actually doing? And --

4 |           THE COURT: Well, I think requests have to be given a  
5 | plain reading, and I read both policies and practices as  
6 | generic terms, so that if there's a codified policy or  
7 | reference to a practice as to how to classify or reclassify  
8 | folks, that's responsive. But at the micro level, what do we  
9 | do with Mr. Fei, to my mind, is not responsive to those two  
10 | particular requests.

11 |           I think we all too often get into the world of  
12 | electronic discovery which admittedly may yield smoking guns in  
13 | lots of cases, but we are talking about five hundred employees,  
14 | a certain percentage of whom we're not concerned with because  
15 | they're the receptionist at the front door and folks like that.

16 |           One thing that I haven't heard has been done is a  
17 | request of the employees of West who are in the position to  
18 | have such documents being asked to look for hard copy  
19 | materials. Has that been done?

20 |           MR. HABINSKY: Yes.

21 |           THE COURT: And there's --

22 |           MR. HABINSKY: We're in the process of doing that.  
23 | We've gathered some of the hard copies.

24 |           THE COURT: Well, but the request was served in  
25 | December. Just so we're clear, I'm going to set -- I'm going

1 in our motion because of all of these delays. So just to be  
2 clear, then, so defendants are going -- have agreed --

3 THE COURT: I mean, Mr. Habinsky hasn't objected to  
4 tolling for the two-week period, so as a practical matter he's  
5 not going to object to my tolling it as opposed to Judge Baer  
6 tolling it. But to the extent that you want greater tolling, I  
7 think that's something you have to take up with Judge Baer.

8 MS. NEILAN: Okay. So we have tolling, then, for  
9 which time period, just so I'm clear?

10 THE COURT: You have tolling for a two-week period  
11 which, in effect, starts a week from today, the date by which I  
12 otherwise would have required that all of the material be  
13 produced, but at the detail level I'm giving Mr. Habinsky two  
14 additional weeks subject to his consent to toll for that two-  
15 week period.

16 MS. NEILAN: Okay.

17 THE COURT: Okay?

18 MS. NEILAN: I think I understand. So the documents  
19 are due, then --

20 THE COURT: The macro-level documents -- the  
21 policies, practices, rubric, procedure, whatever -- and the  
22 database as I've described it are due a week from today. And  
23 the remaining documents at the micro level are due three weeks  
24 from today.

25 MS. NEILAN: And do the e-mails fall into the macro